

E-filed 5/1/06

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE MERCURY INTERACTIVE CORP.
DERIVATIVE LITIGATION

Case No. 05-cv-04642-JF (PVT)

**STIPULATION AND [PROPOSED]
ORDER RE DISCOVERY STAY AND
NOTICE OF WITHDRAWAL OF
MOTION**

DATE: May 12, 2006
TIME: 9:00 a.m.
COURTROOM: 3, 5th Floor
JUDGE: Hon. Jeremy Fogel

1 WHEREAS, on April 6, 2006, nominal defendant Mercury Interactive Corporation
 2 ("Mercury") filed a Motion to Stay Proceedings Pending the Special Litigation Committee's
 3 Investigation. The motion was noticed for hearing in this Court on May 12, 2006, at 9:00 a.m.
 4 before the Honorable Jeremy Fogel.

5 WHEREAS, on April 27, 2006, Mercury and the Plaintiffs reached an agreement resolving
 6 the motion. Plaintiffs agreed to voluntarily stay discovery until May 31, 2006, when the Special
 7 Litigation Committee is expected to release its report. In return, Mercury agreed to withdraw its
 8 pending stay motion and further agreed to respond to Plaintiffs' pending discovery by June 30,
 9 2006. Mercury agreed that its response will not include an objection on the ground that discovery
 10 is premature due to the Special Litigation Committee investigation.

11 WHEREAS, on April 13, 2006, the parties submitted a stipulation to continue the CMC
 12 scheduled for May 5, 2006 until May 26, 2006 so that Mercury's motion to stay proceedings could
 13 be heard prior to the CMC. Given that Mercury has withdrawn its motion to stay, the parties
 14 withdraw their previously submitted stipulation and agree that the CMC should go forward on May
 15 5, 2006 as originally scheduled.

16 IT IS THEREFORE STIPULATED BY AND BETWEEN THE PARTIES AND
 17 ORDERED:

18 All discovery in this consolidated derivative action shall be STAYED until May 31, 2006.
 19 Mercury's motion to stay proceedings, filed April 7, 2006, and the parties stipulation to continue
 20 the CMC, submitted April 13, 2006 are hereby WITHDRAWN. The CMC in this matter shall go
 21 forward as scheduled on May 5, 2006, at 10:00 a.m.

22
 23 Dated: April 27, 2006

HELLER EHRMAN LLP

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 25 By: Sara B. Brody
 26 Sara B. Brody

27 Attorneys for Nominal Defendant
 28 Mercury Interactive Corp.

1 Dated: April 27, 2006

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP

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3 By: Betsy C. Manifold
4 Betsy C. Manifold

5 *Chair of Plaintiffs' Executive Committee*

6 **IT IS SO ORDERED.**

7
8 DATED: 5/1/06

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HONORABLE JEREMY FOGEL